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Report of the Independent Expert on the situation of human rights in Haiti

Note by the Secretariat

The Independent Expert on the situation of human rights in Haiti continues to consider the situation to be very serious but not insuperable, provided that national and international efforts are stepped up. The five priority areas indicated in the previous report are taken up again here: inequality, deprivation of liberty, institutional weakness, impunity and humanitarian crises.

In the present report, the Independent Expert examines in special detail the situation of the elections, which has not yet been resolved, and the deeply worrying situation of Haitians and persons of Haitian origin who, by choice or under duress, are leaving the Dominican Republic for Haiti and are at risk of being left stateless. The Independent Expert visited a camp of such persons to assess the situation on the ground. He also visited a detention centre in Petit-Goâve, where he again observed the extremely inhumane conditions of the country's detention centres and confirmed that the practice of prolonged preventive detention needs to be discontinued.

The Independent Expert repeats his recommendations on boosting literacy efforts and establishing a commission on truth, justice and redress for human rights violations committed in the past and a similar commission for victims of the cholera epidemic.

To ensure proper coordination of these urgent actions, the Independent Expert underscores the need to re-establish the function of Minister for Human Rights (or a similar mechanism) and to reactivate the Interministerial Committee on Human Rights, as well as the need for a concerted human rights action plan for Haiti. This action plan should take into account the recommendations made by the various independent experts and treaty bodies.

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I. Introduction

1. The present report is submitted pursuant to the statement of the President of the Human Rights Council, of 27 March 2015, in which the Council invited the Independent Expert on the situation of human rights in Haiti to undertake a mission to Haiti and to report on that mission to the Council at its thirty-first session (A/HRC/PRST/28/3, para. 16).

2. In the President's statement, the Council agreed to extend the Independent Expert's mandate for one year (para. 12). The present report relates to the period from 1 April 2015 to 10 January 2016 and contains recommendations for the Government of Haiti and the international community. It takes up the five priority areas indicated in the previous report, examining some aspects in greater detail, namely the elections and the situation of persons returning or deported from the Dominican Republic.

3. The Independent Expert undertook a mission to Haiti from 6 to 15 September 2015, followed by a series of meetings in New York from 15 to 18 September. In Haiti, he stayed in Port-au-Prince and visited Petit-Goâve, in the Ouest Department, and Anse-à-Pitres, in the Sud-Est Department on the border with the Dominican Republic.

4. The Independent Expert had also visited Haiti from 22 February to 3 March 2015, two weeks before orally presenting his previous report to the Human Rights Council on 24 March 2015 but after the report had been issued. The present report contains references to the February-March 2015 visit.

5. The Independent Expert wishes to thank all those with whom he met during his visit, especially the Prime Minister, the Ministers for Foreign Affairs, Justice, Education, and Economic Affairs and Finance, the Deputy Minister for Electoral Matters, the Director General of the Ministry of Social Affairs and Labour and the Director General of the Ministry of Women and Women's Rights.

6. The Independent Expert also wishes to thank the four members of the Provisional Electoral Council, the Ombudsman, the mayor of Anse-à-Pitres and the authorities of the Petit-Goâve detention centre, with whom he was able to meet.

7. The support received from the United Nations Stabilization Mission in Haiti (MINUSTAH) was instrumental, as always, in the success of this mission. The Independent Expert wishes to express his appreciation to the Special Representative of the Secretary-General, as well as to all those working with her, in particular in the Human Rights Section. The Independent Expert also wishes to thank the representatives and members of the United Nations programmes in Haiti and New York for their support and for the information they provided.

8. The Independent Expert wishes to thank as well the representatives of the Organization of American States, through whose good offices he was able to meet with members of the diplomatic corps in Haiti. He also expresses his thanks to the ambassadors of the Group of Friends of Haiti with whom he met in New York, hosted by the Permanent Mission of Uruguay to the United Nations.

9. Lastly, the Independent Expert extends his sincere thanks to the many representatives of civil society organizations, political parties, journalists, academics and members of human rights NGOs in Port-au-Prince and the Sud-Est Department with whom he met in Haiti and in New York.

II. Five key aspects of the human rights situation in Haiti

10. Inequality continues to be a serious concern and remains the core cause of the critical situation of human rights in the country. The Independent Expert pointed this out in his first report, in March 2014, in which he encouraged the authorities, the State and the international community to firmly commit to reducing inequality. He urged them to give due consideration not just to the recommendations made by previous experts and rapporteurs of other United Nations bodies and the Inter-American Commission on Human Rights but also to five aspects which for decades have caused great suffering to the people of Haiti. These five areas require intense and focused action to address: (i) the poverty and lack of education prevalent among the majority of Haitians, who are thus denied decent living conditions and have no prospects for the future, (ii) detention conditions that are in most cases inhumane, (iii) irregular operation of the rule of law, (iv) the difficulties faced in guaranteeing that justice is served, in particular with regard to violations perpetrated systematically over the past 50 years and the effects of which are still felt, and (v) other violations, such as forced displacement, the risk of statelessness and the cholera epidemic, which are attributable to other factors, including natural disasters.

11. The five aspects are not new. They are a common thread that runs through the reports of the current Independent Expert and those of his predecessors. Since the last report, there has been little improvement in the human rights situation in Haiti. The situation remains complex but it is not insuperable.

12. To address each of the five aspects, the Independent Expert reiterates his call that a "shock treatment" approach be adopted to: (i) eradicate illiteracy; (ii) resolve, as a matter of urgency, all cases of persons being held in pretrial detention; (iii) ensure transparency and credibility in the holding of the elections; (iv) guarantee redress for the large-scale and systematic violations of human rights perpetrated in the past; and (v) resettle in suitable, long-term housing all of the people displaced by the 2010 earthquake and subsequent disasters who are still living in camps.

13. The Independent Expert's fourth visit to Haiti, in September 2015, provided an opportunity to observe developments in the five aspects mentioned above. A number of improvements had taken place, such as the partial holding of elections and the decrease in the number of people living in camps after the earthquake, but other aspects had not progressed.

14. Before this fourth visit, the Government had realized the seriousness of the problem of elections not being held, as it would lead to the National Assembly closing down in January 2015, and that is in fact what happened. A new Prime Minister had been appointed in December 2014 with the principal aim of ensuring that elections would be held. The dates for the elections were set as 9 August, 25 October and 27 December 2015.

15. In addition, when the June 2015 deadline set by the Government of the Dominican Republic for foreigners to regularize their situation expired, a wave of Haitians and persons of Haitian origin crossed the border: some were being deported by the Dominican authorities, others left out of fear of being deported.

16. The Independent Expert's mission therefore focused on elections and on the situation of Haitians and people of Haitian origin living in camps in Anse-à-Pitres along the southern border of Haiti with the Dominican Republic. The Independent Expert also examined three other aspects requiring urgent attention, namely illiteracy, prolonged pretrial detention and violations committed in the past.

17. In 2012, the Government had established a human rights entity in the form of a Deputy Minister attached to the Office of the Prime Minister, but that function disappeared

with the change of government in December 2014. Under the leadership of the Deputy Minister, the Interministerial Committee on Human Rights had been set up and had begun work on an action plan to promote and protect human rights in Haiti. The preparation of this action plan offered a unique opportunity to incorporate recommendations made by the Independent Expert and by other United Nations bodies. For this, however, it would be necessary to have a human rights entity, attached either to the Prime Minister's Office or to another ministry with sufficient authority to coordinate the work of the government agencies active in this sphere and to broker the adoption of a cross-cutting human rights policy within the executive branch, from where it would subsequently be extended throughout the State and society.

18. In his previous report, the Independent Expert had commended the Government for incorporating a number of international instruments into Haitian legislation and for enacting various laws. However, the Government has still not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance and the Inter-American Convention against All Forms of Discrimination and Intolerance.

19. Haiti has not submitted its fourteenth periodic report to the Committee on the Elimination of Racial Discrimination. It did, however, submit its eighth and ninth periodic reports to the Committee on the Elimination of All Forms of Discrimination against Women in October 2014 and they were reviewed in July 2015; and its initial report was considered by the Human Rights Committee in November 2014.

20. Given that the regular sessions of the National Assembly ended on the second Monday of September 2014, the ratification instruments could not be voted on for the Convention relating to the Status of Stateless Persons, the Convention on the Reduction of Statelessness, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. This task would fall to the new National Assembly following the legislative elections in 2015.

A. Social inequality and economic, social and cultural rights

21. The deep social inequality that pervades Haitian society lies at the root of the country's critical human rights situation, as manifested in the fact that most Haitians do not enjoy the full exercise of their economic, social and cultural rights.

(a) Priority action to eradicate illiteracy

22. As previously recommended by the Independent Expert, tackling this facet of inequality requires that everyone, without exception, be afforded access to a quality education. The effort needs to focus first and foremost on promptly eradicating illiteracy, which is prevalent among nearly one half of the adult population: the literacy rate among Haitians aged 15 and older stands at 48.7 per cent according to the United Nations Development Programme.[1]

23. Reducing inequality takes time and requires structural programmes that go beyond just providing social assistance. Steps must therefore be taken urgently to promote the right to education, which in turn opens up access to the right to work, to food, to housing and to

[1] See http://hdr.undp.org/en/countries/profiles/HTI.

health. The Independent Expert has made this recommendation previously to the national authorities and to the international community, but there has not been any significant headway in this regard in the country.

24. The Independent Expert met with the Minister of Education, who shared the former's concern that this should be treated as a matter of urgency and resolved as soon as possible. The Minister emphasized that he preferred to speak of "citizenship education" rather than "literacy" as a way of moving away from paternalistic mentalities. He added that his office was in the process of preparing the post-2015 education agenda, which would include preschool education and citizenship education.

25. The Minister said he would like to see his Ministry's budget doubled. The country's education budget, which was not insignificant in relative terms (5 per cent of the gross domestic product and 16 per cent of the national budget), was still insufficient in absolute terms.

26. The Independent Expert hopes that the eradication of illiteracy will be made a priority in Haiti and that it will become a reality reasonably soon. He encourages the Government of Haiti to step up its efforts to eradicate illiteracy in the shortest time frame possible so as to lay a solid foundation for the realization of human rights in the country. He again invites the entire international community to support this effort and to coordinate international cooperation with the Government in this area.

(b) Other aspects of economic, social and cultural rights that merit particular attention

27. In the Independent Expert's two previous reports, it was stated that the majority of Haitians lived in conditions of extreme poverty, considering that 60 per cent earn less than US$ 1 per day; unemployment stands at 60 per cent; in the Global Hunger Index, Haiti had a score of 23.3, placing it in the category of "alarming"; over 44 per cent of the population suffers from malnutrition; 74 per cent of families live in slums;[2] 60 per cent of the population lacks access to basic health care, according to the United Nations Children's Fund (UNICEF); and almost half of the country's boys and girls do not attend school, with only 2 per cent of school-age children completing secondary education.[3]

28. The Strategic Development Plan of Haiti is built around five priorities: (a) education and human and social development (access to education, health, social services and culture, and better quality of habitat); (b) the environment and land use; (c) the economy and employment; (d) energy; and (e) the rule of law and democracy. The outgoing government had aimed to halve the number of people suffering from hunger by the end of 2016 and to eradicate hunger and malnutrition fully by 2025.

29. Although Haiti has made significant progress on most of the Millennium Development Goal indicators and has reached all (or almost all) of its targets,[4] according to a report on the Millennium Development Goals and Haiti, significant challenges remain and the progress made in some sectors is still too limited to have a major impact on development and poverty reduction.[5] Among those challenges, the report mentions inequality; the low income levels of 45 per cent of workers, who live on less than US$1.25

[2] United Nations Development Programme (UNDP) and Haiti, "2013 MDG report: Haiti — a new look", (Port-au-Prince, UNDP, 2014). Available from www.ht.undp.org/content/haiti/fr/home/library/mdg/rapport-omd-2013---haiti-un-nouveau-regard/.

[3] See www.undp.org/content/dam/undp/library/corporate/HDR/HDR%202015/HumanDevelopmentReport_EN.pdf.

[4] UNDP and Haiti, "2013 MDG report: Haiti — a new look", executive summary, p. 7.

[5] Ibid.

per day; the representation of women in the Parliament, which stands at only 4 per cent; and the lack of measures to combat deforestation and the loss of biodiversity.

30. With respect to inequality in particular, the human development index for Haiti rose from 0.471 in 2013 to 0.483 in 2014, leaving it in 163rd place among the 188 countries and territories surveyed.[6] When this index is adjusted for the inequalities besetting the poorest of the poor, who are deprived of health, education and dignity, it drops to 0.296 (which is a slight improvement over 2013, when it stood at 0.285).[7]

31. A further disparity appears in the gender inequality index. In 2014, Haiti had a gender inequality index rating of 0.603, which was higher than the 0.599 recorded in 2013. That rating situated the country in 138th place in 2014, as compared with 132nd place in 2013.[8] There has been a steady decline in this indicator, as in 2012 the rating was 0.592 and the country was in 127th place.[9]

32. The Independent Expert calls on the authorities to ensure that the new government takes into account, as a matter of priority in its development plan, the need to eliminate the deep social inequality existing in Haiti. To that end, it should take steps geared to significantly improve income levels for workers, health and education for the poorest of the poor, reproductive health for women, and women's empowerment and representation in the Parliament, as well as other issues, within a reasonable period of time, and in general ensure decent living conditions for all.

B. Liberty, deprivation of liberty and detention conditions

(a) Priority action to address prolonged pretrial detention

33. Conditions in places of detention continue to deteriorate as the result of an expanding prison population and spaces that are both too small and unsanitary. The main contributing factor to this situation is the country's practice of prolonged pretrial detention. This ongoing violation of human rights must be eliminated as soon as possible: the obligation enshrined in the International Covenant on Civil and Political Rights (art. 9.3) should not be allowed to go overlooked.

34. On average, persons being held in pretrial detention account for more than 70 per cent of the prison population. The situation is particularly serious at the Reintegration Centre for Minors in Conflict with the Law (CERMICOL), where that figure is 90 per cent; at the women's prison in Pétion-Ville (88 per cent); and at the national penitentiary (87 per cent).[10] It is therefore minors and women who are mostly held in pretrial detention, which is seldom warranted.

35. During his previous mission in February 2015, the Independent Expert visited CERMICOL in Port-au-Prince. Initially built to accommodate a maximum of 70 persons, it was housing over double that amount: 156 minors, only 10 of whom had actually been sentenced. Remand and sentenced inmates were not separated. Two of the children that the Independent Expert met with had been admitted to the detention centre at 12 years of age, which is against the law.

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[6] See www.undp.org/content/dam/undp/library/corporate/HDR/HDR%202015/HumanDevelopmentReport_EN.pdf (table 1, p. 210, and table 2, p. 214).

[7] http://hdr.undp.org/en/countries/profiles/HTI.

[8] Ibid.

[9] A/HRC/28/82, para. 38.

[10] Data from the MINUSTAH Corrections Unit regarding the prison population at 19 November 2015.

36. In February, the Independent Expert had also visited the women's prison in Pétion-Ville. At the facility, which had been built for around 100 persons, he found 324 women, of whom only 35 had been sentenced, living in extremely overcrowded conditions. Some of them had been held in pretrial detention for 10 years. An 86-year-old woman had been in the prison for 6 years without ever having seen the judge who was in charge of her case. All the cells were infested with bedbugs, which plagued the women day and night. The sanitation facilities were not worthy of the name.

37. In September 2015, the Independent Expert visited the Petit-Goâve detention centre, where he had the opportunity to speak with an inmate who had been arrested in December 2007. When the earthquake struck in January 2010, he escaped from the national penitentiary, to which he had been transferred, but was then rearrested in January 2011, meaning that he had been deprived of his liberty for more than 6.5 years. When he asked the authorities to inform him of the accusations against him, a government commissioner admitted that no case file had been opened but said that he could not release the prisoner because he had to conduct an inquiry. This individual was, therefore, being arbitrarily detained in serious violation of the international obligations of Haiti. During the press conference at the end of his visit, the Independent Expert respectfully requested that the authorities immediately release the individual concerned. This case is a clear example of the ongoing abusive practice of prolonged pretrial detention; that practice must be stopped decisively and without further delay.

38. The Minister of Justice is aware of the problem and, at the time of the February 2015 visit, he informed the Independent Expert of some important initiatives that he was intending to launch. One of these initiatives would be the processing — with support from five legal aid bureaux in Port-au-Prince — of 450 cases not subject to a jury trial. Another would be the establishment of a working group to identify inmates being held for misdemeanors who, had they been tried and convicted, would have already served out their sentences. The Ministry was also considering other options for a long-term solution to the issue of prolonged pretrial detention, such as training programmes for judges, reporting requirements and institutional capacity-building, including for judicial inspections.

39. On 2 March 2015, the Minister of Justice launched a special "emergency operation" aimed at reducing prolonged pretrial detention and prison overcrowding by expediting the judicial handling of cases involving detainees who had not yet appeared before the appointed judge or who had already served their sentences and not yet been released. To that end, a commission comprising four deputy government commissioners was tasked with reviewing misdemeanor cases at the centres with the highest levels of pretrial detention.

40. The Minister of Justice issued five memorandums and circulars in March 2015 to remind government commissioners of their responsibilities with respect to, inter alia, the handling of cases and the need to respect procedural deadlines, establish all the facts and assess the appropriateness of prosecution. This approach is commendable and deserves to be integrated into a sustainable long-term strategy.

41. Five months after the launch of the operation, the results were encouraging: 427 cases had been examined by the commission and 119 cases had been tried, 52 of them ending in acquittal. Among those cases, 40 involved juveniles: 2 of the minors were released and 38 were placed in foster care. All of the minors received legal support from the legal aid bureaux.

42. The impact, however, has not been as impressive as one would hope. In fact, the prison population has increased since March. Previously situated at around 10,500 prisoners, the figure, according to the national police, stood at 11,319 prisoners in September 2015. Of them, 8,140 (72 per cent) were being held in pretrial detention, including 379 women, 203 boys and 20 girls.

43. The Independent Expert reiterates his call for the authorities to put an end to prolonged pretrial detention in Haiti by means of, as stated by the Minister of Justice, both short-term and structural measures.

44. Among the short-term measures, there are still plans to appoint groups of judges for a set period of time to examine, with assistance from final-year law students, cases of prolonged pretrial detention. It would also be a good idea to revive the office responsible for monitoring prolonged pretrial detention (or set up a similar team within the Government) to oversee the planning, implementation and monitoring of measures aimed at eliminating this serious human rights violation which is perpetrated in Haiti on a daily basis.

45. Regarding structural measures, it is clear that a change needs to be made to the system whereby investigating judges cannot be reappointed immediately upon expiry of their mandate because they have to wait months to be issued a certificate of good conduct so that the Ministry of Justice can reappoint them. This practice paralyses the administration of justice, since around 50 investigating judges are presently unable to investigate cases involving persons being held in prolonged pretrial detention. The procedure could be reorganized in such a way that certification is ready before the expiry of a judge's mandate, thus allowing judges to be reappointed without any interruption in their work.

46. Resolving the problem of pretrial detention in Haiti is not just an option that the Haitian authorities might wish to consider within the framework of other national management priorities: it is a priority obligation in its own right under the International Covenant on Civil and Political Rights. For that reason, the Independent Expert renews the urgent call made to the Government to take all necessary measures without delay, in line with the Human Rights Committee's concluding observations on the initial report of Haiti in late 2014 (CCPR/C/HTI/CO/1, para. 15).

(b) Other aspects concerning detention conditions

47. According to the national police, in September 2015 the country's prisons housed 11,319 prisoners — against planned capacity estimated at between 4,000[11] and 6,000[12] — in spaces that were both unsanitary and not being expanded. That works out to an occupancy rate of 804 per cent for the country overall, with the space per inmate dropping from 0.59 m^2 in June 2014 to 0.55 m^2 in July 2015[13] and to 0.54 m^2 in November 2015.[14] The inhumane, degrading conditions referred to in the Independent Expert's previous report were worsening.

48. During his September 2015 visit to the Petit-Goâve police station, which is not a prison facility, the Independent Expert observed two detention cells that measured around 30 m^2 each. The two cells were holding 172 persons: about 86 in each. Prisoners had to take turns sleeping; some slept in improvised hammocks strung from the ceiling. They were not given authorization to leave the cell for at least one hour of suitable exercise in the open air daily,[15] because the guards felt they lacked means in order to monitor the prisoners. The prisoners were clearly being kept in inhumane conditions.

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[11] According to information provided orally by the prisons administration.

[12] According to the International Centre for Prison Studies, the capacity was 5,958 at 1 August 2014 (www.prisonstudies.org/country/haiti).

[13] The international standard is 4.5 m^2 per prisoner. In extreme cases, 2.5 m^2 per prisoner is permitted for short periods.

[14] MINUSTAH Corrections Unit data for the incarcerated population at 19 November 2015.

[15] Standard Minimum Rules for the Treatment of Prisoners, para. 21 (1).

49. Sanitation facilities at places of detention are inadequate. At the Petit-Goâve police station, prisoners have no privacy and the conditions are unsanitary. Each of the two cells, holding 86 persons each, had a single toilet in one corner, which was a source of parasites and roaches that plagued prisoners. Similar observations had been made by the Independent Expert at the prisons visited during previous missions.

50. The overcrowding at CERMICOL and, especially, at the women's prison and the Petit-Goâve police station is not only inhumane and degrading but it is also unjust for the vast majority of the inmates, who are being deprived of their liberty through a situation of prolonged pretrial detention. The same holds true for the detention centres visited by the Independent Expert during previous missions, namely at Les Cayes (610 prisoners in a space with capacity for 100), the Aquin police station, the prison in Jacmel and the national penitentiary in Port-au-Prince.

51. Detention centres continue to lack means that would allow prisoners to work or study. Health care and food services are very tenuous.

52. Appropriate sanitation facilities, proper access to food and health care, the possibility for prisoners to work or study and the availability of humane spaces for daily living and recreation are some of the fundamental conditions that need to be provided as soon as possible. The Independent Expert is obliged to reiterate the call made in this regard to the Haitian authorities in his previous reports.

C. Institutional weakness: the weak rule of law

53. The situation concerning the rule of law has not shown any signs of improvement since the previous report. The people of Haiti thus continue to lack guarantees for the exercise of many of their basic rights inasmuch as the key elements for the realization of these rights are partly, or sometimes fully, inoperative.

(a) Priority action to ensure the right to participation in public life

54. In previous reports, the Independent Expert had indicated that the right of citizens to vote and to stand for election was often flouted in Haiti and that uncertainty about election rules was a problem that went to the very heart of the country's institutional life and thus urgently needed a solution. The systematic postponing of the elections since 2011 had led to the executive branch directly appointing local authorities in several municipalities (rather than by election) and to a standstill in the Senate and Chamber of Deputies in January 2015. In the absence of a National Assembly, the Government could have taken over the legislative function by way of presidential decrees, which would have been a very dangerous scenario for democratic life.

55. In an effort to resolve this situation and organize elections, in late 2014 the President empanelled an advisory commission that subsequently recommended that a new government be formed. On 12 December 2014, the President announced that he accepted the commission's recommendations, which included replacing the Prime Minister, Laurent Lamothe. On 25 December 2014, Evans Paul was appointed Prime Minister by presidential decree.

56. The new government set as one of its primary, and almost exclusive, tasks the holding of elections in 2015. To that end, a schedule was drawn up for three different election days: 9 August for legislative elections, 25 October for the second round of legislative elections and the first round of the presidential elections and 27 December for the second round of the presidential elections.

57. The 9 August elections were marked by a series of irregularities, according to qualified observers such as the Election Observation Mission of the European Union.

58. Human rights organizations — operating through the National Network for the Defence of Human Rights, the National Election Observation Council and the Haitian Council of Non-State Actors — closely monitored nearly one half of the polling stations (728 out of 1,508, or 48.27 per cent). They issued a detailed report on incidents observed, including acts of violence, before the elections (five murders and two attempted murders occurred between 9 July and 2 August) as well as on the day of the elections (acts of violence and electoral fraud were reported at no fewer than 104 polling stations). Several members of polling station committees were alleged to have infringed the law on the day of the elections; and numerous candidates, accredited observers and others reportedly attempted to influence voters on polling station premises. This was made possible in some cases by the use of flimsy cardboard booths that did not ensure voters' privacy, ballot boxes that in some instances were no more than see-through bags, and ink that did not show up immediately on the voter's finger, thus allowing him or her to vote more than once. A total of 102 polling stations had been set up in inappropriate venues, such as private homes or nightclubs. There was also some uncertainty surrounding the eligibility requirements for candidates and the arbitrary exclusion of some candidates.[16] The national turnout rate of just 18 per cent was even lower in the capital and was highlighted as a cause for concern.

59. In the light of such serious irregularities, the aforementioned national observers called for an earnest and independent investigation of the Provisional Electoral Council (CEP) and for a thorough review of the election process to be conducted with an eye to establishing responsibilities, remedying errors and creating a climate of trust in support of future elections.[17]

60. This call was heard, at least in part, by the Government and by CEP, and the elections on 25 October took place in more favourable conditions. The turnout rate was 25 per cent. According to the Election Observation Coalition, made up of the three non-governmental groupings mentioned earlier plus a fourth one (Solidarité Fanm Ayisyèn), CEP took into consideration some of the Coalition's recommendations, in particular with regard to preparations for the balloting. Specifically, accreditations were issued sufficiently in advance, election materials were available at most of the polling stations, the national police ensured proper security during the voting and most of the polling station committees included at least one woman.[18]

61. At the same time, however, the Election Observation Coalition drew attention to several irregularities that had led it to conclude that those efforts were not enough to be able to say that the 25 October elections had been conducted in accordance with democratic principles. Among the practices reported were that polling stations had again been set up in private establishments, voting booths did not ensure privacy and the ink used could be

[16] National Network for the Defence of Human Rights, National Election Observation Council and Haitian Council of Non-State Actors, "Rapport sur le premier tour des élections législatives partielles"(Report on first round of partial legislative elections), Port-au-Prince, 25 August 2015. See http://touthaiti.com/touthaiti-actualites/4549-election-9-aout-2015-rapport-complet-sur-le-premier-tour-des-elections-legislatives-partielles-rnddh-cno-conhane.

[17] Ibid., p. 57.

[18] Solidarité Fanm Ayisyèn, National Election Observation Council, Haitian Council of Non-State Actors and National Network for the Defence of Human Rights, "Scrutin du 25 octobre 2015: une vaste opération de fraude électorale planifiée" (Elections of 25 October 2015: massive, planned electoral fraud), Port-au-Prince, 12 November 2015, p. 46 (http://touthaiti.com/touthaiti-actualites/4664-rapport-complet-scrutin-du-25-octobre-2015-une-vaste-operation-de-fraude-electorale-planifiee-rnddh-et-la-coalition-des-observateurs).

easily removed from the fingers. In addition, a number of violations had allegedly been committed by observers of questionable status who were not members of civil society but who had themselves admitted to being observers on behalf of a political party. Such irregularities, in the Coalition's view, could point to the possibility of fraud. To prevent that from happening again, the Coalition recommended inter alia that the Government should publish the names of election observation institutions having received some form of State support and that CEP should investigate the activities of the election observation bodies, conduct an audit of the electoral process and take corrective measures in advance of the December 2015 elections.[19]

62. On 10 November 2015, CEP issued a communication stating that Unité Nationale pour le Développement Appliqué (UNADA) had been removed from the list of national agencies accredited to observe election processes because of fraud and selling of accreditations.[20]

63. According to the preliminary count after the first round of the presidential elections as announced by CEP, Jovenel Moïse — the candidate of the President's party, Parti haïtien Tèt Kale (PHTK) — received 32.81 per cent of the 1,538,393 valid ballots (or 511,992 votes). Jude Célestin, of Ligue alternative pour le progrès et l'émancipation haïtienne (LAPEH), came in second with 25.27 per cent (394,390 votes); Moïse Jean-Charles, of the opposition party Pitit Dessalines, came in third with 14.27 per cent (222,646 votes); Maryse Narcisse, of Fanmi Lavalas, a party close to the former President Mr. Aristide, came in fourth with 7.05 per cent (110,049 votes); Éric Jean-Baptiste, of Mouvement Action Socialiste (MAS), came in fifth with 3.63 per cent (56,671 votes); and Jean-Henry Céant, of Renmen Ayiti, came in sixth with 2.50 per cent (39,005 votes). The remaining 13.05 per cent was split among 48 other candidates, only 3 of whom garnered over 1 per cent of the vote; 1.42 per cent of the ballots cast were blank.[21]

64. One of the nine members of CEP, Jaccéus Joseph, who represents the human rights sector, did not sign the preliminary count of the 25 October presidential elections or the one for the 9 August legislative elections. Although initially he gave no explanation,[22] he later stated that the basic reason for declining to sign was simply that he had doubts.[23]

65. Immediately after the preliminary results were made public, the candidates that had come in second to seventh challenged the count and signed a statement saying that the results were reminiscent of the official elections held under the dictatorial regimes.[24]

66. On 12 November, CEP issued a correction to press release No. 92 stating that 490 polling station reports had been declared invalid, instead of the 296 previously announced,

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[19] Ibid., pp. 46-50.

[20] Provisional Electoral Council, "L'UNADA est retirée de la liste des organisations d'observation électorale" (UNADA removed from list of election observers), press release No. 80, 10 November 2015 (www.cephaiti.ht/Information-electorale/108-COMMUNIQUE-DE-PRESSE-80.html).

[21] Provisional Electoral Council, "Élections octobre 2015 — Résultats préliminaires — Président premier tour"(October 2015 presidential elections: first round preliminary results), 5 November 2015 (https://electionpresidentielle.cephaiti.ht/rapport_PR/resume-presidentielle.pdf).

[22] Le Nouvelliste, "Résultats: Jaccéus Joseph, membre du CEP, n'a ni signé, ni expliqué" (CEP member Jaccéus Joseph does not sign count nor gives explanation), Port-au-Prince, 9 November 2015 (http://lenouvelliste.com/lenouvelliste/article/152232/Resultats-Jacceus-Joseph-membre-du-CEP-na-ni-signe-ni-explique#sthash.5xnc077H.dpuf).

[23] Haïti Libre, online version, "Haïti — Actualité: Zapping electoral …" (Election information updates), 13 November 2015.

[24] Les voix du monde, "Présidentielle en Haïti: les résultats du premier tour contestés" (Haiti presidential elections: first-round count contested), 7 November 2015. See www.rfi.fr/ameriques/20151107-haiti-manifestations-resultats-premier-tour.

because they presented signs of various kinds of fraud. These included the number of votes exceeding the number of registered voters at a given polling station, discrepancies between numbers indicated in figures and written out in words on the ballot total, fraudulent alteration and other irregularities.[25]

67. The elections slated for 25 December did not take place. On 16 December, the executive branch decided to establish the Electoral Evaluation Commission. On 21 December, CEP postponed the elections sine die because of the implications that the Commission's recommendations could have for the subsequent election calendar.[26]

68. The Commission submitted its report to the President on 3 January 2016 and a new date for the second round of the presidential elections was announced (24 January 2016). Among other recommendations, the Commission concluded that, in order to move forward with the process and ensure a meaningful turnout in a calm setting, two things were necessary: political dialogue among the various stakeholders and a thorough technical review of the election machinery's accountability with regard to irregularities that seemed to point to large-scale fraud.[27]

69. The Independent Expert hopes that the Haitian authorities will continue to address the problems surrounding the elections. The political dialogue and thorough review of the irregularities as recommended by the Electoral Evaluation Commission could help to boost the legitimacy of the elections for a new President, whose five-year term of office should begin on 7 February 2016, according to the Constitution.

(b) Other elements of the rule of law that need to be guaranteed

70. The other areas indicated in the Independent Expert's previous reports as being in need of significant improvement have not seen any change in their situation: development of a reliable land registry system, failure of judges and court officials to handle matters for which they are responsible, little respect for the right to life (which undermines the executive branch's ability to protect this right) and the continuing exploitation of children as domestic workers (*restavèk*).

71. It should be noted that a draft bill to amend the Criminal Code was presented to the President in March 2015. The text incorporates some important human rights content, such as protection against double jeopardy, human trafficking, discrimination (including on the basis of sexual orientation), genocide, crimes against humanity and torture, in line with the definition provided in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the decisions and practice of the Committee against Torture, including psychological torture. In addition, the revised version provides greater protection for women by codifying harassment and strengthening legal penalties for sexual abuse.

72. Having a State built on the rule of law is one of the main challenges facing Haiti and it is something that the country direly needs. The Independent Expert wishes to underscore the importance of re-establishing the position of Deputy Minister for Human Rights and relaunching the work of the Interministerial Committee on Human Rights. These two

[25] Provisional Electoral Council, Office of the President, "Note rectificative du communiqué de presse n° 92" (Correction to press release No. 92), Pétion-Ville, 12 November 2015 (www.hpnhaiti.com/site/pdf/490pv.pdf). For press release No. 92, of 11 November 2015, see www.cephaiti.ht/Information-electorale/120-COMMUNIQUE-DE-PRESSE-92.html.

[26] Provisional Electoral Council, press release No. 104, 21 December 2015. See www.cephaiti.ht/Information-electorale/.

[27] Report of the Independent Electoral Evaluation Commission, Pétion-Ville, 2 January 2016, p. 12.

actions will be key in ensuring that human rights issues are accorded due prominence when tackling the causes of the country's sharp inequality, as well as for purposes of coordinating the reports that Haiti is to submit to the human rights bodies and to the Human Rights Council, in particular for the universal periodic review in 2016.

D. Impunity and violations committed in the past

73. The fourth aspect, which is closely linked to bolstering the rule of law, is the fight against impunity. This issue should be afforded priority attention in the search for a solution to the critical situation of human rights in Haiti.

(a) Priority action to provide redress for human rights violations committed in the past

74. It is crucial to continue with the proceedings launched against the human rights violations perpetrated under the regime of the former dictator Jean-Claude Duvalier. No significant headway has been made since he died in October 2014. The proceedings need to move forward against his cohorts in the dictatorship. For that, the investigating judge must be assured independence, security measures need to be strengthened and additional resources (human, physical and financial) must be made available to follow through with this high-profile and symbolic case. The investigating judge should be relieved of all other cases in order to devote himself entirely to the Duvalier case.

75. The Independent Expert wishes to repeat his recommendation that a national commission be set up to provide redress to the victims of serious violations committed in the past under the regime of the two Duvaliers (father and son) and the military, as well as acts of violence perpetrated by groups supporting or opposing President Aristide. The Independent Expert repeats his recommendation that such a commission be set up, following on the similar idea proposed in 1995 for the National Truth and Justice Commission created for the victims of the 1991 coup. Aside from overseeing material reparations and judicial declarations of responsibility, the commission could contribute in the medium and long terms to defining educational activities aimed at re-establishing the right to memory; this would ideally redound in a substantial improvement of the human rights situation in Haiti.

76. It is important to recall that, at the time the report of Haiti was considered in 2014, the Human Rights Committee shared the Independent Expert's view as to the urgency of taking action on violations committed in the past and recommended that the investigation of the Duvalier case be continued so that all persons responsible for serious violations committed during that time would be brought to justice and the victims would be given fair and equitable redress. The State should implement the recommendations of the National Truth and Justice Commission in respect of the serious violations committed between 1991 and 1994 (CCPR/C/HTI/CO/1, para. 7).

(b) The need for a stronger and more credible judicial system to combat impunity

77. In Haiti, impunity is not limited just to cases of human rights violations. The judicial system must have stronger guarantees of independence and the High Council of the Judiciary must be helped to operate more effectively: this will build greater credibility for the institutions fighting impunity, especially in cases involving murder (starting with those attributed to agents of the State), sexual violence and attacks against human rights defenders. The Independent Expert makes a call once again to the country's authorities in this regard, as also expressed by the Human Rights Committee at the time it considered the report of Haiti in 2014 (CCPR/C/HTI/CO/1, paras. 16 and 17).

E. Humanitarian crises linked to other factors having an impact on human rights

78. The fifth aspect, which stands in the way of many Haitians being able to enjoy their human rights, is composed of violations stemming from other factors, such as forced displacement in the wake of natural catastrophe, statelessness and the cholera epidemic.

(a) Priority action for displaced persons

79. Some 60,000 people are still living in camps that were set up for displaced persons after the 2010 earthquake. Efforts must continue to be deployed to ensure that these people have the means to live decently. At the time of the Independent Expert's third visit, in March 2015, the total number had been 80,000. There is no denying the progress made, but it must be maintained and indeed increased in order to find long-term, decent housing solutions without further delay for the many families who are still living in harsh conditions in these camps six years after the earthquake.

80. Resources made available through Canadian cooperation will be administered by the International Organization for Migration to meet the needs of these 60,000 individuals. That is very welcome news in the face of this dramatic situation.

81. The people sheltered in these camps continue to live in constant threat of being forcibly evicted by the property owners, which represents a further menace to their already flouted rights. The Independent Expert again echoes the call made by the Human Rights Committee to the Government to the effect that it ensure that no one is evicted from a camp unless some other solution has been found for the person and his or her family and ensure that all those displaced by the earthquake receive a long-term solution for their housing situation (CCPR/C/HTI/CO/1, para. 18).

(b) Statelessness and the rights of Haitians and persons of Haitian origin migrating from the Dominican Republic

82. In his previous mission, the Independent Expert had accorded special attention to the situation of Haitians and persons of Haitian origin leaving the Dominican Republic for Haiti. During his visits to Haiti, the Independent Expert heard accounts of acts of discrimination that had targeted persons of Haitian origin in the Dominican Republic. The Independent Expert wishes to express his solidarity with the people of Haiti on this matter and repeats the call made to the Haitian authorities that an agreement be reached with the Dominican authorities to ensure that the rights of persons of Haitian origin are respected and to end the discrimination and risk of statelessness to which these individuals are exposed.

(i) Returnee camp at Anse-à-Pitres

83. In September, the Independent Expert went to Anse-à-Pitres, located in southern Haiti on the border with the Dominican Republic. Some 2,500 persons were living there in five separate camps in very harsh conditions: tents made of cardboard and plastic, no food or safe drinking water, no appropriate sanitation. This posed (and continues to pose) a risk for the spread of diseases such as cholera. The camp visited by the Independent Expert had two latrines for roughly 500 persons. Children and adolescents had nowhere to study. Some residents were making charcoal by gathering wood from nearby areas, which had led to noticeable deforestation. There were no health-care services and most of the people had no identity documents.

84. The local mayor's office and a committee made up of NGOs and cooperation agencies were doing what they could to help camp residents. There was talk of moving the

residents to their place of origin in Haiti and giving them a small subsidy to get them started. The move would need to happen quickly, as the rainy season was about to begin and the tents were not likely to hold up against the rains.

85. The camp residents said that they had not been expelled by the Dominican authorities. They defined themselves as "voluntarily displaced people" who had moved "under pressure": they had feared being deported by the Dominican Republic after that country's Government announced that all persons in irregular status would be deported as from 17 June 2015. They had thus left of their own volition.

86. While acknowledging the right of the Dominican authorities to control migration in their national territory, the Haitian authorities have requested that the 1999 Protocol between the two countries be revisited so that the names and status of persons to be deported would be made available sufficiently in advance.

87. The Independent Expert also called on the Haitian authorities to take urgent steps to ensure that persons entering from the Dominican Republic, whether deported or displaced "under pressure", had access to health care, education and sanitation, as well as food and drinking water.

88. The Independent Expert wishes also to point out that, without diminishing the significance of the important specificities of the rights of Haitians and persons of Haitian origin living in the Dominican Republic, the situation of displaced persons in the camps at Anse-à-Pitres is similar to that of the displaced persons living in the camps set up after the 2010 earthquake and other natural catastrophes in Haiti. Means of subsistence are lacking entirely, beginning with the right to housing, but other fundamental rights are at stake as well. This confirms the need for a coherent social assistance policy in order to meet the basic needs of thousands of Haitians who still have nowhere to live other than in camps for displaced persons.

(ii) Some considerations concerning statelessness

89. The Independent Expert is concerned by two aspects of statelessness: (1) the risk of statelessness for Haitians not possessing identity documents; and (2) the risk of statelessness for persons of Haitian origin born abroad, namely in the Dominican Republic, who are denied access to a nationality by virtue of Haitian law, the law of the country of their birth or other practices.

90. With regard to the first aspect, limitations in the country's civil registry system and local habit sometimes impede enjoyment of the right to Haitian nationality for individuals who acquire it automatically pursuant to the principle of *jus sanguinis* as established in Haitian legislation. In 2011, it was estimated that between 20 and 40 per cent of the children born in Haiti were not registered when they were born, thus placing them at risk of statelessness. Many Haitians not in possession of a document attesting to their nationality are at risk of statelessness because of this and numerous other factors. An awareness campaign should be launched to draw attention to the importance of registering babies at birth.

91. The Independent Expert notes that some progress has been made in this area, for example through the Organization of American States project for the modernization and integration of the civil registry system in 2012. Under the project, the Government was able to issue birth certificates for thousands of children and identity cards for millions of adults, at the same time as it modernized the civil registry system. The Independent Expert encourages the Government to step up its efforts to ensure that all Haitians have access to an identity document.

92. As to the risk of statelessness for persons of Haitian origin born in the Dominican Republic, the Independent Expert made reference in his previous report to the judgement of the Inter-American Court of Human Rights of 28 August 2014. That Court had found Judgement TC/0168/13 of the Constitutional Court of the Dominican Republic to be in violation of the American Convention on Human Rights inasmuch as the Dominican Court had held that anyone born in the Dominican Republic after 1929 to parents who were foreign nationals in irregular immigration status was not entitled to Dominican nationality, even if that person had already acquired the right to such nationality.

93. The Inter-American Court of Human Rights found as well that some of the provisions of Act No. 169-14 of 23 May 2014 violated the American Convention on Human Rights. The Act was intended to remedy, to some extent, the situation of children born in the Dominican Republic to parents who were non-resident aliens, i.e., part of the group covered by Judgement TC/0168/13. Individuals were classed into two groups (A and B). Group A comprised those who had managed to get registered in the Dominican civil registry; group B comprised those who had not. The people in group A automatically would be considered Dominican nationals. Those in group B would have a specific time frame within which to register themselves in a special registry of aliens in order to later normalize their migration status under the National Plan for the Regularization of Aliens. Two years after being granted immigrant status, persons in group B could apply to be naturalized and acquire Dominican nationality. The Inter-American Court determined that, by considering these persons as foreigners, Act No. 169-14 was essentially retroactively depriving them of nationality.

94. The foregoing notwithstanding, the Dominican Government has continued to enforce Act No. 169-14. With regard to group A, the Central Election Board published on 25 June 2015 a list of 55,000 individuals who were invited to collect their document attesting to their Dominican nationality; the Independent Expert applauds that measure. There are, however, some persons of Haitian origin in group A whose name did not appear on the list or who, even if on the list, did not receive their document because of red tape or financial issues. These persons are currently at risk of statelessness inasmuch as they do not hold Dominican nationality and they could, because of restrictions under Haitian legislation, be impeded from acquiring Haitian nationality.

95. With regard to group B, the Dominican Government has indicated that only 8,755 persons had applied for registration in the aliens registry by the set deadline. Thousands of people in group B, most of them persons of Haitian origin, are thought not to have been able to register under the procedure set out in Act No. 169-14. These people are at permanent risk of being left stateless. They no longer have access to Dominican nationality through naturalization, nor are they guaranteed Haitian nationality. The people registered in the aliens registry are similarly at risk of statelessness until such time as they are recognized as Dominican nationals by way of naturalization.

96. Furthermore, as long as the persons in groups A and B are not considered Dominican nationals, their children will be at the same risk of statelessness.

97. The Independent Expert thus calls on the international community to take appropriate steps in order that the Dominican Republic honour its international obligations with regard to statelessness. Specifically, the Dominican Republic should be encouraged to desist from denying Dominican nationality to the persons in groups A and B and to their children in order to eliminate the risk of statelessness for persons of Haitian origin in the Dominican Republic.

98. As to the regularization of the immigration status of Haitians residing in the Dominican Republic, the Independent Expert acknowledges the good practices adopted by the Dominican Government under the National Plan for the Regularization of Aliens, as a

result of which 288,486 people were registered. Over 200,000 of them, mostly individuals of Haitian origin, met the eligibility requirements under the Plan and were granted official immigrant status for a period of one or two years.

99. Concerning deportations, the Independent Expert hopes that the Dominican Republic will take appropriate steps to prevent the deportation of persons who are stateless or at risk of being stateless or of Dominicans of Haitian origin. In the view of the United Nations High Commissioner for Refugees, the expulsion of these individuals would lead to violations of their human rights and would create a refugee situation in Haiti. As for the expulsion of Haitians in irregular immigration status, the Dominican Republic should be encouraged to observe international standards on this matter.

(c) Commission on truth, justice and redress for cholera victims

100. The cholera epidemic continues to plague the country. The efforts to eradicate the disease have been insufficient.

101. In October 2015, the epidemic was declared in Anse-à-Pitres. The Independent Expert had been in Anse-à-Pitres a month earlier visiting camps of refugees coming from the Dominican Republic and had notified the authorities in the hope of preventing this from happening. Between the declaration of the epidemic and 22 November 2015, 17 deaths were registered in the commune of Anse-à-Pitres. More than 40 people had been infected, and 90 suspected cases had been recorded. Parc Cadeau I and II and the areas of Fonds Jeannette and Tête à l'Eau were the hardest hit. According to information from an interview conducted by the Refugees and Returnees Support Group with the director of the Anse-à-Pitres health centre on 21 November 2015, the epidemic had intensified because of poor basic sanitation infrastructure in the commune.[28]

102. With the epidemic not abating but indeed spreading, efforts to tackle this catastrophe must be redoubled. In addition, a commission for redress should be created, as a matter of urgency, to quantify the harm done, establish compensation, identify responsible parties, halt the epidemic and take other measures in line with the principles adopted by the General Assembly in December 2005.[29]

III. Conclusions and recommendations

103. **Based on his own observations and those of his predecessors over a period of three decades, the Independent Expert had proposed in previous reports that priority be given to five key aspects and that efforts be concentrated on those aspects to ensure proper focus of resources and energy and to facilitate tracking of results. The Independent Expert had also proposed that urgent action be taken in a specific area for each of the five aspects identified.**

104. **These five aspects are as follows: (1) the fragile economic and social situation in which the majority of the population lives; (2) inhumane conditions and overcrowding in prisons; (3) the weak rule of law; (4) impunity with respect to human rights**

[28] Radio Métropole, "Flambée du choléra à Anse-à-Pitres" (Cholera outbreak in Anse-à-Pitres), 27 November 2015.

[29] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

violations committed in the past; and (5) the impact of natural disasters and other factors undermining respect for basic rights.

105. According priority to these five aspects and their associated critical problem areas remains a valid course of action. The Independent Expert reiterates the recommendations made in that regard in his previous report,[30] particularly the adoption of urgent measures to ensure:

(a) That illiteracy is eradicated within a reasonably short time frame;

(b) That the practice of prolonged pretrial detention is eliminated, for instance by extending initiatives such as the special emergency operation and broadening their scope to include felony cases while ensuring availability of the financial resources necessary to ensure their proper functioning;

(c) That the legislative and presidential elections are reviewed and carried through to completion;

(d) That a truth, justice and redress commission is established in respect of the large-scale, systematic human rights violations committed in the past;

(e) That decent housing is made available for persons displaced by the earthquake who are still living in camps;

(f) That a truth, justice and redress commission is established for the victims of the cholera epidemic and as part of the efforts to halt the epidemic;

(g) That the rights of Haitians and persons of Haitian origin living abroad or having previously been at risk of statelessness abroad, particularly in the Dominican Republic, are protected. It is also important that the Haitian authorities provide persons arriving from the Dominican Republic with adequate shelter and conditions that ensure respect of their human rights and establish long-term integration programmes. There is also a need to raise public awareness about the importance of registering all births, whether in Haiti, the Dominican Republic or elsewhere.

106. In addition, a plan of action to promote and protect human rights should be put in place by the authorities, in cooperation with civil society and the Office of the Ombudsman, with a view to devising structural measures that will:

(a) Bring about a substantial reduction in social inequality and ensure the enjoyment of a basic level of social, economic and cultural rights by the entire population;

(b) Make prison conditions more humane, including by reducing prison overcrowding, providing appropriate health and sanitation facilities, ensuring that food is available for prisoners and making it possible for inmates to work or study while in prison;

(c) Strengthen the rule of law;

(d) Improve the effectiveness and credibility of the judicial system.

107. Special attention should be accorded to women's rights in all the above-mentioned areas as part of the effort to reduce the extreme gender inequality in Haiti.

108. To restore the situation of human rights in the country, it is strongly recommended that there be, at the highest level of the executive branch, a human

[30] A/HRC/28/82, paras. 87-92.

rights entity with capacity to ensure the effective operation of the Interministerial Committee on Human Rights.

109. **The Independent Expert continues to consider that the human rights situation in Haiti, although extremely serious, can be surmounted if all efforts expended to achieve that goal are channelled in the same direction. The Independent Expert issues a special call to the authorities, civil society and the international community to build strong consensus in that regard, for which the starting point could be these or other more relevant recommendations, as appropriate, but nonetheless a consensus that could elicit strong political will and perseverance of efforts to achieve a set of core results.**

110. **The Independent Expert reaffirms his strong commitment to assist in this undertaking.**

111. **Bearing in mind the MINUSTAH consolidation plan and the ongoing discussions regarding the presence of the United Nations in Haiti, it will be important to ensure that the Office of the United Nations High Commissioner for Refugees maintains a presence in Haiti to support the effort to secure and guarantee the full enjoyment of human rights in the country.**

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Agenda item 10
Technical assistance and capacity-building

Report of the Independent Expert on capacity-building and technical cooperation with Côte d'Ivoire in the field of human rights

Note by the Secretariat

The Secretariat hereby has the honour to transmit the report of the Independent Expert on capacity-building and technical cooperation with Côte d'Ivoire in the field of human rights, Mohammed Ayat, to the Human Rights Council. This report is the outcome of the Independent Expert's third visit to Côte d'Ivoire, which took place from 2 to 12 November 2015, and covers the period from 1 September to 31 December 2015.

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Report of the Independent Expert on capacity-building and technical cooperation with Côte d'Ivoire in the field of human rights

Summary

This report is the outcome of the Independent Expert's third visit to Côte d'Ivoire, which took place from 2 to 12 November 2015, and covers the period from 1 September to 31 December 2015. The Independent Expert is pleased to highlight the fact that presidential elections were held peacefully on 25 October 2015. A majority of the national and international observers who were present agreed that the elections had conformed to international standards. The Independent Expert applauds the sound judgement displayed by the political community of Côte d'Ivoire and encourages its members to proceed along its chosen path with a view to consolidating the peace and maintaining the ground that has been gained in terms of economic and human development.

The Independent Expert notes with satisfaction that, in his inaugural address of 4 November 2015, the President of Côte d'Ivoire identified national reconciliation as a priority for his second term in office. Reconciliation necessarily entails ensuring that justice is served, and the Independent Expert wishes once again to encourage the Ivorian authorities to continue their efforts to ensure that the crimes committed in the past do not go unpunished. A greater degree of balance is now being achieved in terms of the legal action being taken against the two camps that took part in the violence that broke out following the 2010 and 2011 elections. The findings of the National Commission of Inquiry are now being drawn upon with a view to striking that necessary balance in the interests of justice and reconciliation.

The investigations currently under way have been hampered by the difficulties encountered by the teams in charge of exhuming the remains of victims of the crisis that erupted in the wake of the elections in the western part of the country. These problems have blocked the progress of the investigation into reports of numerous bodies having been thrown into wells in Nahibly and the work being done to uncover a number of mass graves; in addition, exhumations have not yet begun in the south-western region of the country. In order to respect the traditions and sensibilities of the population, a great deal of tact is called for in dealing with these cases. In addition, in some instances, exhumations have been hampered by a lack of logistical support.

The Independent Expert emphasizes the need to tackle these problems without delay while, at the same time, strictly upholding due process guarantees. The right of defendants and other accused persons to stand trial within a reasonable time is a pivotal component of those guarantees. The Independent Expert welcomes the praiseworthy efforts of the Ivorian authorities to build the capacity of the justice system by constructing and renovating courthouses, developing plans for the construction and renovation of places of detention and providing training to judges and other judicial personnel.

The Independent Expert applauds the Government's efforts to provide compensation to victims of serious human rights violations and underscores the importance of expediting the identification of victims, clarifying the eligibility criteria and providing victims with swift access to redress. In order to respond to victims' legitimate expectations, coordination between the National Commission on Reconciliation and Compensation for Victims and the National Programme for Social

Cohesion must be improved.

The Independent Expert draws attention to the worrisome conditions existing in Ivorian prisons and highlights the efforts deployed by the Ivorian authorities to renovate existing prisons and build new ones. These construction projects should be aligned with international standards regarding the detention of minors. It is regrettable that, in most of the country's prisons, minors subject to a provisional custody order are not held separately from adults. The Ivorian authorities are aware that prison conditions are poor, and their willingness to rectify this situation with all due haste deserves the firm support of the international community.

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I. Introduction

1. This report is submitted pursuant to resolution 29/24 of the Human Rights Council of 3 July 2015, whereby the Council decided to extend the mandate on capacity-building and technical cooperation with Côte d'Ivoire in the field of human rights for a period of one year and requested the Independent Expert to submit a report to the Human Rights Council at its thirty-first session and his final recommendations at its thirty-second session.

2. The present report is the outcome of the Independent Expert's third visit to Côte d'Ivoire, which took place from 2 to 12 November 2015, and covers the period from 1 September to 31 December 2015. During this mission the Independent Expert met with a number of senior officials of Côte d'Ivoire and with both national and international stakeholders. He also held meetings with the Prime Minister and other members of the Government, including the Minister of Justice, the Minister of Human Rights and Civil Liberties, the Minister of the Interior and Security, and the Minister of Solidarity, the Family, and Women's and Children's Affairs.

3. The Independent Expert also met with officials in various strategic areas, including the Independent Electoral Commission, the National Commission on Reconciliation and Compensation for Victims, the National Programme for Social Cohesion and the Unit for Coordination, Follow-up and Reintegration. The Independent Expert also met with senior justice officials, including the Prosecutor-General of the Supreme Court, the Prosecutor-General of the Court of Appeals of Abidjan and the Public Prosecutor of the Court of First Instance of Abidjan, who is also in charge of the Special Investigation Unit.

4. The Independent Expert talked with representatives of political parties and civil society institutions, including non-governmental human rights organizations and victims associations. He met with the General Staff of the Armed Forces and with members of the diplomatic corps and with officials from various United Nations agencies. He also had the opportunity to participate in a workshop on mediation and human rights organized by the Ombudsman. On this occasion, as in the past, he was able to visit several places of detention.

5. The Independent Expert sought to gather information about the way that the human rights situation in Côte d'Ivoire has evolved, which allowed him to continue to develop recommendations concerning ways of improving the situation. Another of his objectives was to continue his discussions with the Ivorian authorities regarding what they need in order to build capacity in this respect.

6. The Independent Expert wishes to express his gratitude to the Ivorian authorities for having invited him to their country and for their candid and sincere cooperation. He also wishes to thank all the persons with whom he met in order to gather information and discuss issues relating to his mission. He is very grateful to the officials of the United Nations Operation in Côte d'Ivoire (UNOCI) and the staff of the Human Rights Division of UNOCI for the extremely valuable support which they provided during his visit.

II. Political background

A. A major political event: peaceful elections held in accordance with international standards

7. At the outset of this report, the Independent Expert wishes to highlight the presidential elections that were held in Côte d'Ivoire on 25 October 2015. A majority of the national and international observers who were present agreed that the elections conformed to international standards. Given the configuration of the political landscape and the political coalitions that have taken shape fairly recently, a single round of elections was held. The incumbent, President Alassane Dramane Ouattara, was re-elected with 83.6 per cent of the votes, with Pascal Affi N'Guessan obtaining 9.3 per cent of the votes and Kouadio Konan Bertin 3.9 per cent.

8. In recent times, many elections have been followed by violent protests, but on this occasion the losing candidates all accepted the results and congratulated the President on his re-election. This commendable attitude opens up bright prospects for a pluralistic dialogue and a cooperative approach on the part of Ivorian politicians. The Independent Expert applauds the sound judgement displayed by the political community of Côte d'Ivoire and encourages its members to proceed along its chosen path with a view to consolidating the peace and maintaining the ground that has been gained in terms of economic and human development.

9. The fact that presidential elections were held peacefully and in accordance with international standards is a major achievement that stands in sharp contrast to this country's recent troubled past. The Independent Expert wishes to highlight this very welcome event, which is a stellar achievement shared by all Ivorians, without exception. They should be rightfully proud of what they have accomplished. He also wishes to underscore the crucial institutional role played by the Independent Electoral Commission in ensuring that the election could proceed smoothly in an atmosphere of calm.

B. Independent Electoral Commission

1. Status and purpose

10. The Independent Electoral Commission is a standing body established under the Constitution (art. 32, para. 4) and is responsible for ensuring that elections are transparent and held in a lawful manner. It represents an important institutional development, inasmuch as, in the past, elections were organized and supervised solely by the Ministry of the Interior. In conjunction with his review of the presidential elections of 25 October 2015, the Independent Expert is also exploring the outlook for the elections that are to be organized in the near or medium term by the Independent Electoral Commission.

2. Successful organization of presidential elections

11. The Independent Expert notes that the dialogue held between the Government and political parties in the run-up to the recent presidential elections made it possible to ensure a relatively good balance in terms of the representation of the various political stakeholders and the inclusion of a significant portion of the opposition. The Independent Electoral Commission made a sustained effort to meet the challenges that arose in that regard. It updated the electoral rolls and took part in developing the security operations plan to be put into effect during the elections. As part of that plan,

28,000 members of Ivorian security forces (the police, gendarmerie and army) were deployed throughout the country. Their mission was to head off any trouble or violence and to ensure that citizens would feel safe and could confidently go to the polls undisturbed. In addition, all the candidates were provided with comparable security details.

12. During the official election campaign, which ran from 9 to 23 October 2015, the Independent Electoral Commission made sure that all the candidates had equal access to government media (Ivorian television and the daily newspaper, *Fraternité matin*). Before the elections, the Independent Electoral Commission had met with each candidate, had taken note of his or her comments and of any grievances and had made an effort to ensure that they were taken into consideration. All the candidates were entitled to have two representatives at the polling stations and were able to avail themselves of that right without hindrance. National and international observers were present during the voting. Electronic biometric tablets were used to check voters' identities and so avoid voter fraud. Unfortunately, this system did not work well at some polling stations since, on election day, some polling officers were unable to use these electronic tablets properly, even though they had been instructed in their use during training sessions organized for that purpose. In these relatively rare cases, manual identification systems had to be used instead.

13. Polling officers stationed in more remote areas of the country brought the voting records back and validated the results. It is highly significant that the unsuccessful candidates did not contest the results and that they all attended the President's inauguration. The Independent Electoral Commission is to be credited with the organizational work involved in this achievement (without, of course, forgetting the role of all its various partners). This standing body will be called upon to organize numerous other elections to be held in the future.

3. Forthcoming elections

14. The democratic process will continue with other (legislative, regional and municipal) elections. The Independent Electoral Commission is committed to organizing them all successfully in accordance with national and international standards for the good of all Ivorians. However, organizing these elections may be just as complicated, or even more so, than the presidential elections were. The Commission should therefore begin its preparations now while exercising the utmost vigilance in this respect. Its personnel are in need of ongoing training, and the people who will be asked to operate the electronic tablets, if they are to be used in future elections, will require further instruction. More generally, training should be more carefully tailored to the established objectives and should be provided with sufficient lead time.

4. Lessons to be learned

15. The Independent Electoral Commission should seek to learn all the lessons it can from the recent presidential elections. It would be highly instructive, for example, to examine the voter turnouts in each region, classify them, compare them, analyse them and use this as a basis for drawing conclusions and developing useful recommendations for the future. It is important to determine, for example, why voter turnout was lower in certain regions of the country, to what extent each presidential candidate was able or unable to mount a campaign with nationwide coverage and why, and how to rebuild the electorate's trust in the electoral process and in politicians. These are not idle questions. The answers to them and the social and political adjustments which they indicate are needed could greatly improve the way in which the current national reconciliation process is being handled and could strengthen the

rule of law and the democratic process, to the benefit of all Ivorians. This fundamental exploratory work should be undertaken in close cooperation with other national bodies such as the National Programme for Social Cohesion and the National Commission on Reconciliation and Compensation for Victims.

III. National reconciliation: progress and challenges

A. Combating impunity through the justice system

1. National reconciliation: a priority identified by the Head of State

16. The Independent Expert is pleased to note that, in his inaugural address on 4 November 2015, the President of Côte d'Ivoire reiterated his firm commitment to continue working to further the reconciliation process. This was, in fact, the first priority that he identified during his address.

2. Recent progress of the reconciliation process

17. A number of advances in this connection should be mentioned. The first has to do with the work being done by the judicial branch to combat impunity. The second relates to the area of transitional justice, which falls directly and indirectly under the responsibility of the National Commission on Reconciliation and Compensation for Victims and the National Programme for Social Cohesion.

3. Combating impunity through the justice system

18. The justice system continues to make progress in its effort to combat impunity. In 2014, the assize courts, which had not been in operation for more than a decade, were opened again. Since then they have tried a number of cases, including one in which 83 persons, including Simone Gbagbo, were charged with having committed acts of violence following the elections in 2011. Her application for judicial review is now before the Court of Cassation. The 83 defendants in this case were all members of the former regime.

19. Since the Independent Expert's second visit, in May 2015, members of the Forces Nouvelles, who had joined the Forces Républicaines de Côte d'Ivoire, have been prosecuted or are in the process of being brought to trial. The courts are therefore making headway in their efforts to strike a greater balance in terms of the prosecution of members of the two camps who took part in post-election violence in 2010 and 2011. The findings of the National Commission of Inquiry are now being drawn upon with a view to achieving that necessary balance in the interests of justice and reconciliation.

B. Challenges

20. A number of difficulties have slowed the progress of some of the investigations now being conducted. It is true, nonetheless, that, with the help of the international community, the exhumations required in order to gather the necessary evidence have been completed in a number of locations (such as Toulepleu, Bloléquin, Guiglo and the whole of southern Abidjan). In those cases it is important to take the necessary steps to preserve and make use of this evidence and to return the victims' remains to their families as swiftly as possible so that they can give their loved ones proper burials and achieve some type of closure.

21. In certain locations, however, the population continues to oppose the exhumations for cultural reasons and, in some instances, as a way of expressing open or covert political dissent. Difficulties of this type have been experienced in Duékoué, in the western part of the country. This has blocked the progress of the investigation in Nahibly into reports of numerous bodies having been thrown into wells and has hindered efforts to uncover mass graves. Furthermore, exhumation work has not yet begun in the south-western region. In order to respect the traditions and sensibilities of the population, a great deal of tact is called for in dealing with these cases. In addition, in some instances, exhumations have been hampered by a lack of logistical support. This problem could be quickly remedied with the proper technical assistance.

22. While legal action is focusing on the crisis that broke out following the 2010 and 2011 elections, the fact remains that other serious human rights violations were committed during earlier crises, as detailed by various investigative committees of the United Nations. The perpetrators of these crimes should not be allowed to go unpunished either.

23. It is important for these problems to be tackled soon while, at the same time, strictly upholding due process guarantees. The right of defendants and other accused persons to stand trial within a reasonable time is a pivotal component of those guarantees. The commendable efforts of the Ivorian authorities to build the capacity of the justice system by constructing and renovating courthouses, developing plans for the construction and renovation of places of detention and providing training to judges and other judicial personnel should be pursued and supported more actively by the international community.

C. Combating sexual violence

24. UNOCI monitors the human rights situation throughout Côte d'Ivoire on an ongoing basis and reports any human rights violations that are thought to have been committed by members of the army. Military authorities assured the Independent Expert that they systematically follow up on these reports, although it is sometimes very difficult to find the guilty parties.

25. Between June and October 2015, members of the Forces Républicaines de Côte d'Ivoire, working in cooperation with the Human Rights Division of UNOCI, organized three large workshops on combating sexual violence against women. One of the recommendations that came out of those workshops was that standards relating to the effort to combat impunity for acts of sexual violence committed in connection with armed conflicts should be included in the code of ethics for the armed forces that is currently being drawn up. This recommendation has already been submitted to the Minister of Defence. The army has also started to create a database on acts of sexual violence committed by military personnel, but this praiseworthy initiative requires material support if it is to be completed.

26. In the meantime, 30 focal points have been stationed in the various regions of the country and given the responsibility of reporting cases of gender-based violence. These focal points work with UNOCI field representatives and periodically organize activities to raise the awareness of members of the Forces Républicaines de Côte d'Ivoire about the need to prevent gender-based violence.

27. Côte d'Ivoire was delisted from the annex to the report of the Secretary-General on children and armed conflict in 2007 (see A/69/926-S/2015/409, para. 57). This marks a significant advance in the area of children's rights. If Côte d'Ivoire succeeds in launching a more forceful policy for the elimination of sexual violence, it may legitimately aspire to a time when no group in the country figures on the list of parties

that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict on the Security Council agenda (see A/66/657-S/2012/33, annex). It is to be recalled that, in his report entitled "The future of United Nations peace operations: implementation of the recommendations of the High-level Independent Panel on Peace Operations", the Secretary-General established that "States parties repeatedly listed in my annual reports on children and armed conflict and on conflict-related sexual violence will henceforth not be accepted for participation in United Nations peace operations" (see A/70/357-S/2015/682, para. 127).

D. Activities of the National Commission on Reconciliation and Compensation for Victims

28. The National Commission on Reconciliation and Compensation for Victims is responsible for drawing up a consolidated, definitive list of victims of the post-elections crisis and for deliberating on possible forms of redress. It has also been charged with developing recommendations for presentation to the President of Côte d'Ivoire. The Commission is now in the process of preparing that consolidated list. The initial deadline for entering names on the list of victims was 30 June 2015, but it has been extended twice since then. The latest deadline was set at 10 December 2015. The Commission reports that 71,746 cases have been registered and validated.[1] Difficulties have been encountered in arriving at a precise, operational definition of redress that can be incorporated into a legal instrument. With a view to developing such a definition, the Commission has wisely chosen to look for inspiration from the experiences with transitional justice of other countries such as South Africa and Morocco.

29. On 4 August 2015, two months before the start of the official election campaign and prior to the consolidation of a definitive list of victims, the President decided to commence the compensation process for 4,500 people who fall into one of two categories: people who lost relatives and people who have personally suffered harm and are in need of treatment and follow-up care. People who have lost a loved one (3,500 persons) receive 1 million CFA francs (CFAF), while those in need of medical care (1,000 persons) will be provided with such care free of charge together with CFAF 150,000 to cover their transportation costs.

30. The objective of this and other operations of the sort is to show victims that the Government is committed to fulfilling its promises regarding redress. These initiatives need to be aligned, however, with the efforts of the National Commission on Reconciliation and Compensation for Victims to develop a definition of what constitutes a victim and of what constitutes redress and to determine how the latter is to be provided. In some quarters people are asking whether the CFAF 1 million payment to people who have lost a loved one is, given the severity of the harm suffered, an advance against a larger payment or if it is instead more of a symbolic sum to be paid in view of the large number of people to be compensated and the limited funds available. Arguments can be advanced to justify either one of these approaches.

31. In order to forestall arousing the kind of frustration that could undermine the national reconciliation process, a sustained effort to explain the reason for the chosen approach, along with its objectives and limitations, is called for. The authorities should lend a compassionate ear to victims concerning their expectations regarding the

[1] The Dialogue, Truth and Reconciliation Commission interviewed 72,483 persons, of whom 28,064 were women and 757 were children, but other departments, such as the Ministry of Solidarity, the Family, and Women's and Children's Affairs and the Ministry of Health, have lists of their own.

redress to be provided for the harm that they have suffered, but they should also, at the same time, avoid nurturing expectations that will be impossible to meet.

32. It should be noted that the report of the Dialogue, Truth and Reconciliation Commission has not yet been made public, and it is strongly recommended that this situation be rectified. This recommendation was set out in the Independent Expert's preceding report (see A/HRC/29/49, para. 80) and also figures in Security Council resolution 2226 (2015). The contents of the Dialogue, Truth and Reconciliation Commission's report rightfully belong to the victims and to all Ivorians, since they have the right to be informed of the nature and extent of the abuses committed during the post-election crisis. Although there may be a few legitimate exceptions, victims generally need and want their grievances to be recognized publicly and the abuses to which they were subject to be denounced as such. Making the report public would also presumably have a cathartic effect on the direct and indirect victims of the post-election violence.

E. The National Programme for Social Cohesion

1. Awareness of the importance of peaceful dialogue

33. The National Programme for Social Cohesion has worked to raise awareness of the importance of maintaining a dialogue among the different sectors of Ivorian society. In the run-up to the presidential elections, it organized targeted awareness campaigns to get the message across that the elections were not a war but rather a good opportunity for citizens to exercise their right to choose their leaders and that this could and should be done in a peaceful setting marked by respect for the opinions of others.

2. Adoption of a national strategy for achieving reconciliation and social cohesion

34. An overall national strategy for achieving reconciliation and social cohesion was designed and then validated on 3 October 2015 following consultations with the different sectors of the Ivorian population organized with support from UNOCI. This national strategy is now awaiting approval by the country's authorities and its subsequent adoption. The results of the consultation process attest to Ivorians' desire to have a more equitable justice system and their support for the promotion of social and economic rights. The intent is for this national strategy to reflect their concerns accurately. The strategy provides for the restoration of social cohesion through the promotion of a number of cardinal values in such areas as good governance and the introduction of a policy for the advancement of economic, social and cultural rights (including those relating to education, job creation, the emancipation of women, the enhancement of human and food security, and the equitable settlement of property disputes).

3. Creation of an institutional framework for the implementation of the national strategy for achieving reconciliation and social cohesion

35. An institutional framework has been established for the implementation of the national strategy for achieving reconciliation and social cohesion. It provides a platform for cooperation among representatives of national and local authorities, national and international non-governmental organizations and the United Nations, among others. The availability of the necessary material and human resources and the presence of the required political will have been identified as prerequisites for the strategy's successful implementation. The efforts devoted to this initiative by the Ivorian authorities can be leveraged by the advocacy and support of the international community.

4. The role of the National Programme for Social Cohesion in the implementation of the national strategy for achieving reconciliation and social cohesion

36. The National Programme for Social Cohesion has a direct role to play in the reparation process and serves as the executive secretariat for the National Commission on Reconciliation and Compensation for Victims (pursuant to Decree No. 2015-174 of 24 March 2015). In that capacity, it has worked to further the implementation of the pilot phase of the process for providing redress to crisis victims in Côte d'Ivoire. A committee has been created to coordinate and monitor the reparation process under the supervision of the Commission. This committee is composed of representatives of the National Commission on Reconciliation and Compensation for Victims, the National Programme for Social Cohesion and six ministries. In late June 2015, the committee met and approved the list of victims prepared by the National Commission of Inquiry to be used as a basis for the pilot phase of the reparation process.

37. The Independent Expert sees a continuing need to find the best possible way of aligning this pilot phase with the efforts being undertaken by the National Commission on Reconciliation and Compensation for Victims and the National Programme for Social Cohesion with a view to establishing an appropriate framework for the compensation of all the victims.

5. Structural ties between the National Commission on Reconciliation and Compensation for Victims and the National Programme for Social Cohesion

38. The Independent Expert wishes to draw attention to the difficulty involved in coordinating the important roles performed in relation to reparation by the National Commission on Reconciliation and Compensation for Victims and the National Programme for Social Cohesion because the instruments that define those roles are unclear and open to divergent interpretations on the part of the two institutions.

39. The Independent Expert strongly recommends that the public authorities clarify this situation as soon as possible in order to expedite the reparation process, which is one of the pillars of national reconciliation.

40. The Independent Expert also calls upon the international community to provide financial support for victim compensation funds and to continue to play an active role in building the human and material operating capacity of the National Commission on Reconciliation and Compensation for Victims and the National Programme for Social Cohesion.

IV. The human rights situation

A. Human rights in the context of the presidential elections

41. Clearly, the elections could not have been conducted so successfully in the absence of a basic respect for human rights on the part of the Ivorian authorities. This stance has paved the way for a constructive dialogue and has, in large measure, engendered a social environment that is conducive to the exercise of a number of fundamental political rights, such as the rights to freedom of expression and freedom of peaceful assembly. As observed by the Independent Expert in a press release dated 12 October 2015, at the start of the election campaign, Côte d'Ivoire needs peace and democracy in order to pursue its economic and human development processes and to reclaim its position as an open, inclusive country. The Independent Expert would also add that respect for human rights is the cornerstone for any sustainable development process.

42. It is nonetheless advisable to draw a distinction between two periods: the election campaign itself and the period that preceded that campaign.

1. During the election campaign

43. During the election campaign itself, the Human Rights Division of UNOCI noted that public demonstrations and meetings held by the opposition proceeded peacefully and as planned. Peaceful, public demonstrations and meetings are the outcome of the combined efforts of two main groups: on the one hand, there are the people who participate in demonstrations or assemblies, who must adhere to the applicable laws and regulations and exercise self-discipline in order to avoid any outbursts that could constitute a threat to public safety, and, on the other hand, there are the public authorities, who should safeguard people's right to demonstrate and to participate in peaceful public assemblies and should provide appropriate instructions to avert any outbreak of violence. Peaceful public assemblies and demonstrations are a hallmark of maturity on the part of the population and of a responsible attitude and adherence to international standards on the part of the authorities.

2. Prior to the election campaign

44. In contrast, during the pre-campaign period, the UNOCI Human Rights Division, which is responsible for monitoring the human rights situation in the country on an ongoing basis, observed that some opposition demonstrations had been banned and that a number of people, some of whom belonged to the opposition, had been arrested. The Independent Expert brought these incidents up with the authorities and inquired about the reasons behind them. The authorities responded that there had been violent demonstrations and that a call for street protests had been made following the publication of the list of presidential candidates. Disturbances had broken out in the Department of Gagnoa, and specifically in Logouata, in the wake of demonstrations organized for 10 September by the National Youth Coalition for Change.

45. Demonstrators were protesting the candidacy of the incumbent, President Alassane Ouattara, whose Ivorian nationality had been called into doubt in some quarters on the basis of the concept of "ivoirité" (Ivorian identity). The disturbances led to the death of three persons and caused serious material damage, with properties being burned down in Bayota, Logouata and Ouragahio. Unrest had also broken out in Bonoua and Youpougon, a district of Abidjan. These incidents had put local and national authorities on the alert, especially given what had happened in the past, the imminent security risks that they posed and the fear that they could threaten the country's still fragile social cohesiveness.

3. The legal regime governing the organization of peaceful demonstrations and public assemblies

46. The Independent Expert has researched the legal regime in Côte d'Ivoire that governs the right to organize public assemblies and demonstrations. Under that regime, assemblies and demonstrations must be announced in advance but the organizers are not required to obtain authorization. If the public authorities determine that an assembly or demonstration could pose a threat to law and order, they may decide to prohibit it. The system is thus a more liberal one than the system whereby prior authorization must be obtained by the organizers of public assemblies or demonstrations. The Independent Expert notes that the authorities have both the right and the duty to ensure the safety of the country's citizens (both those who are demonstrating and those who are not).

4. International standards applying to public assemblies and peaceful demonstrations and to arrests

47. The Independent Expert wishes to remind the authorities that the power to prohibit peaceful demonstrations and assemblies should only be used in exceptional circumstances under international law. More specifically, freedom of expression through assemblies and demonstrations is a fundamental human right whose enjoyment may not be restricted except under exceptional circumstances that are in full conformity with the principles of legality, necessity and proportionality. It is important, under all circumstances, to avoid banning public assemblies or demonstrations based on an overly broad interpretation of what constitutes a threat to law and order. In addition, any such ban should be made known in writing as soon as possible, along with the reasons for it. The practice of informing the population of the reasons for such a ban is conducive to the type of transparency which should characterize decisions taken by public authorities, as well as being instructive and contributing to civic engagement. This also makes it possible, where appropriate, for citizens to exercise their right to have recourse to the legal, administrative and judicial remedies open to them in as effective a manner as possible.

48. Training to raise awareness about the international standards governing the right to hold public assemblies and demonstrations should be provided to members of law enforcement agencies, who should also receive reminders regarding these standards from superiors on a regular basis. By the same token, the authorities and politicians whose supporters participate in such assemblies and demonstrations should ensure that citizens are aware of their rights and of the extent to which those rights may legally and legitimately be restricted.

49. It is understandable that the trauma experienced by the whole of Ivorian society as a result of the violence that reigned over the past two decades may at times engender an excessive degree of precaution and a tendency to exaggerate potential threats. This may, in its turn, prompt the authorities to prohibit certain assemblies or demonstrations without due cause. The consolidation of the rule of law, which is a goal close to the hearts of all Ivorians, will necessarily entail the adoption of a more temperate attitude by the public authorities and redoubled efforts to uphold the civic and political rights of all persons.

50. Arrests should be made only when they are absolutely necessary to avert serious, imminent threats of danger and in strict observance of the persons' rights, which include the right to be held in a known location and for the persons' presence there to be duly registered, the right to have access to a lawyer without delay, the right to be promptly brought before a judge and the right to be tried within a reasonable period of time in strict accordance with all due process guarantees. Any and all arrests, regardless of the identity of the arresting authority (police, gendarmerie or the National Surveillance Directorate (DST)), should be conducted in a way that upholds people's rights and should be closely overseen by public prosecutors and judges within the bounds of their personal, material and territorial jurisdictions. The time limits applying to the duration of police custody should be scrupulously observed under the constant and vigilant supervision of the public prosecutor's office. Persons who are convicted and given a custodial sentence by a court of law should be transferred to a prison rather than being held in police or DST custody.

B. Prison conditions

1. The worrisome situation in correctional facilities

51. The situation in the prisons of Côte d'Ivoire remains a cause of concern, and the Ivorian authorities are well aware of this. The current state of affairs is the outcome, among other factors, of the prolonged period during which the country was plagued by violent conflict — conflict that inevitably had an impact on public infrastructure, including the country's prisons. The Ivorian authorities are aware that prison conditions are poor, and their willingness to rectify this situation with all due haste deserves the firm support of the international community.

52. The Independent Expert wishes to reiterate the observations and recommendations concerning the country's prisons that he made in his preceding report (A/HRC/29/49). He would also add that the Government must put an end to the tyranny exercised by certain prison bosses over the rest of the prison population. One example is the so-called "Chinaman", who is incarcerated in the Abidjan Detention and Correctional Centre.

53. In this report the Independent Expert would like to place particular emphasis on the situation of minors in conflict with the law. When dealing with juvenile offenders, the vulnerability of these children should be taken into consideration, and they should be given a genuine opportunity for rehabilitation.

2. Situation of minors in conflict with the law

54. The juvenile justice system in Côte d'Ivoire suffers from serious shortcomings that have not escaped the attention of the authorities. In order to rectify these problems, a well-designed reform programme and sufficient material and human resources will have to be put in place. In 2012, a national policy for the protection of all children was adopted and, with support from UNOCI and a number of donors, the steps to be taken to restructure the juvenile justice system have been under discussion since 2013. This restructuring programme will encompass the entire legal framework within which the juvenile justice system operates. More specifically, it includes plans for the creation of legal protection services specifically for juveniles within the court system. Initially, these services will be piloted in two districts of Abidjan, Plateau and Yopougon, and in the cities of Bouaké and Man. The order authorizing the establishment of these services is pending, and it is strongly recommended that it be issued soon.

55. The Ivorian authorities are working to renovate the country's prisons and to build new ones. Since 2013, plans have been put in place for the construction of nine prisons and for the renovation of existing facilities (decision of the Council of Ministers of 25 July 2013). These construction projects should be aligned with international standards regarding the detention of minors. It is regrettable that, in most of the country's prisons, minors subject to a provisional custody order are not held separately from adults.

56. There are only three observation centres for minors in the country. These centres are located in Abidjan, Bouaké and Man.

3. Abidjan Juvenile Observation Centre

57. At the time that the Independent Expert visited the Abidjan Juvenile Observation Centre, it housed 61 children in very unhealthful conditions. This facility has the regrettable distinction of being located within the Abidjan Detention and Correctional Centre and is therefore within a prison environment that is totally at odds with its

purpose, which is to help judges gain an idea of these troubled minors' personalities before they rule on their cases. While it is true that there is a wall that separates this observation centre from the prison itself, in practice this separation is often illusory. In addition, the Abidjan Juvenile Observation Centre does not have medical facilities of its own, so minors who are ill are cared for in the prison infirmary; in some cases they stay there overnight, with all the safety issues and threats to their moral integrity which that entails.

58. This situation is on the point of being rectified thanks to the relocation of the Abidjan Juvenile Observation Centre. The minors housed in the facility located within the Abidjan Detention and Correctional Centre are to be rehomed in the new Observation Centre shortly. Throughout the country, the utmost effort should be made to separate minors, whether they are in temporary detention or have been convicted, from adult prisoners.

4. The specific situation in the Dabou Centre

59. Another matter that should be forcefully addressed is the situation of the children who are referred to as "germs" (*microbes*) in the Dabou Centre. The Independent Expert feels called upon to reiterate his categorical condemnation of the use of this term to stigmatize children in conflict with the law (see A/HRC/29/49, para. 17). At the time of the Independent Expert's visit to Côte d'Ivoire, the Dabou Centre housed some 60 children who are considered to pose a danger to the community because of the acts of violence that they have committed in the past and the risk that they may commit similar acts in the future. They are themselves sometimes attacked by members of the public in retaliation for acts of violence which they have or are suspected of having committed.

60. The Independent Expert has been assured that these children are not incarcerated, since they have gone to the Centre of their own free will or have been taken there by family members and are free to leave whenever they wish. The Centre is run by the Unit for Coordination, Follow-up and Reintegration, which took the place of the Disarmament, Demobilization and Reintegration Authority. The authorities emphasized that the Centre's purpose is to rehabilitate the children who are housed there.

61. The Independent Expert wishes to make the following observations in this regard. It is imperative that these children be protected from attacks by members of the public, which may be motivated by fear or by a desire for revenge. Moreover, the determination of the extent to which they pose a danger to society, any restriction of their freedom of movement for any appreciable amount of time and any type of custodial arrangement should be overseen by the justice system. Children in conflict with the law should be provided with suitable rehabilitative care that is in keeping with their young age and in accordance with the law. The institutions entrusted with providing that care should be closely supervised by the justice system.

62. Special attention should be devoted to the children known as "talibés" who have recently begun to enter the country across its northern borders. These children usually come from very poor families who entrust them to religious teachers. However, rather than ensuring their education, some of these teachers subject them to the most disgraceful forms of exploitation and force them to beg on their behalf.

C. Child protection policy

63. Child protection systems should also have a preventive component. The authorities should not wait until a child begins to engage in misconduct before taking

him or her in hand. The Government of Côte d'Ivoire has shown itself to be aware of this and has been working to make school attendance compulsory and free of charge for children up to the age of 16. The national social protection strategy that was adopted in 2013, which provides for universal social security coverage, is expected to benefit all vulnerable sectors of the population, including children (see A/HRC/29/49, para. 26).

64. A bill on trafficking in children has been submitted to the National Assembly. The Independent Expert recommends that this opportunity be taken to address the issue of trafficking in persons in general, including, of course, the trafficking of children and women.

65. A bill on the protection of children who have been deprived of familly support has been adopted. This legislation, which provides for assistance in such areas as health and education, covers two categories of children. The first category, Wards of the Nation, includes orphans of government functionaries and children orphaned in natural disasters. This category is of symbolic importance and its existence can be expected to strengthen the nation's social cohesion, which is why the National Commission on Reconciliation and Compensation for Victims is involved in drawing up this list of child beneficiaries. The second category, Wards of the State, is essentially composed of abandoned children. While the Independent Expert is aware that there may be certain understandable considerations underlying the creation of these categories, the fact remains that all children should benefit from sufficient protection and that the quality of that protection should only differ to the extent that this is dictated by the principle of the best interests of the child as set forth in the Convention on the Rights of the Child.

66. A number of private-sector initiatives to afford protection to children who lack the support of their families are under way. In order to ensure that these initiatives stay on track, however, the Ministry of Solidarity, the Family, and Women's and Children's Affairs requires that all associations that intend to work with orphans must first obtain a permit. In addition, the Ministry issues a list of the funding provided to these associations by donors.

67. Another noteworthy initiative relating to children has been the establishment of a children's parliament. This institution is designed to introduce young people to the workings of a democratic system and has already held a number of successful sessions.

D. The advancement of women and efforts to combat discrimination against them

1. Parity

68. Efforts to promote the advancement of women and to introduce a social policy that covers gender issues are moving forward. The Ministry of Solidarity, the Family, and Women's and Children's Affairs has drafted a bill dealing with equality of opportunity for women to take up public office. Clearly, once it is passed, this legislation should be accompanied by a sustained effort to make all members of society aware of the need to combat discrimination against women in all its various forms. The fact that this will require continuous efforts over the long term underscores the importance of setting up a gender observatory.

2. Student pregnancies and early marriage

69. Although the number of pregnancies among students has declined, the authorities continue to combat this problem, and awareness-raising activities have been

undertaken in the schools. Early marriages are also a concern. The Government has enlisted the aid of non-governmental organizations in addressing this problem on the basis of a local grass-roots approach to dealing with the families concerned.

3. Sexual violence against women

70. The Ivorian authorities' records point to a decrease in the number of acts of sexual violence directed against women. It would be desirable for these quantitative findings to be backed up by statistics that have been systematically compiled using scientific methods in order to provide greater guidance in orienting the society's response to this problem. The authorities have found that women are more willing than before to report acts of sexual violence committed against them. Increased awareness of this problem and the mechanisms that have been put in place to combat it appear to be gradually bearing fruit. One of these mechanisms is the Legal Affairs Directorate of the Ministry of Solidarity, the Family, and Women's and Children's Affairs. That office assists women victims of sexual violence and follows through on the legal action that they bring before the courts. The Ministry is also regularly called upon to take action in cases of harassment in the workplace.

71. The fact that the assize courts held no sessions at all between 2002 and 2014 and have held them only irregularly since then has heightened the degree of impunity for the crime of rape which exists in the country and has led to a substantial backlog of rape cases. Given this situation, judicial authorities have been obliged to downgrade these crimes by categorizing them as indecent assault instead of rape so that they can be tried in courts of first instance. This also means, however, that convicted persons are subject to lighter sentences than they would have been if they had been tried by an assize court.

72. The Independent Expert reiterates his concern about the fact that article 354 of the Criminal Code establishes the penalties for rape but does not provide a definition of the offence. The absence of such a definition is not conducive to a common understanding on the part of judicial officials of what constitutes rape and opens the way for varying interpretations of the offence.

E. The National Human Rights Commission of Côte d'Ivoire

1. The Commission's role during the election campaign

73. The National Human Rights Commission of Côte d'Ivoire played an active role during the presidential election campaign and on voting day. In the run-up to the elections, it monitored the registration process, and the comments that it conveyed to the Independent Electoral Commission contributed to the decision to extend the deadline so that the lists would be as inclusive as possible. The National Human Rights Commission also interviewed the candidates and informed the Independent Electoral Commission of their grievances. During the voting, it stationed observers at the polls in coordination with civil society associations and later issued a report on the elections.

2. Publication of the Commission's annual reports and other activities

74. On 25 September 2015, the National Human Rights Commission of Côte d'Ivoire submitted its first annual report, which covered the year 2014, to the President. That report was then promptly made public, along with the annual report for 2013. This significant achievement deserves mention. The Independent Expert wishes to underscore the importance of issuing annual reports on the human rights situation in the country on a regular basis. It is also important to publish regular reports on

sectoral issues that merit further examination. These reports need to be properly publicized and brought to the attention of civil society and the public authorities, particularly legislators and the staff of offices responsible for security matters and the administration of justice.

75. Cooperation between the National Human Rights Commission of Côte d'Ivoire and the UNOCI Human Rights Division continues to bear fruit. A strategic five-year plan for the fulfilment of the Commission's mandate was adopted in October along with a plan of action for the implementation of the recommendations made during the universal periodic review and by the treaty bodies. The Commission continues to partner with civil society in connection with the national human rights observatory and in other areas. Through its Subcommission on Detention, it also continues to devote special attention to the situation of incarcerated persons and to the improvement of their treatment.

76. The Commission has succeeded in increasing the number of regional offices. It is nonetheless true, however, that only 15 of the planned 31 offices have as yet been set up, and these regional commissions are faced with severe shortages of resources. More generally, the Commission is in need of more resources in order for it to be able to organize more human rights training activities in the various public sectors where such training is required.

3. Enhancement of the status of the Commission

77. In his inaugural address of 4 November 2015, the President of Côte d'Ivoire announced that he intended to initiate the process of amending the Constitution. The Independent Expert applauds this initiative insofar as it will help to consolidate the rule of law. A constitutional reform process also offers a valuable opportunity to enhance the status of the National Human Rights Commission of Côte d'Ivoire. The Commission would stand to gain from being recognized as a constitutional institution entrusted with monitoring the observance of human rights in the country and working with the authorities and civil society to promote human rights. Its institutional and financial independence should also be consolidated so that it may be brought more fully into line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

78. The Independent Expert wishes to emphasize that the National Human Rights Commission of Côte d'Ivoire is an extremely important institution for the promotion of human rights in the country. It has a crucial role to play in the proactive prevention of human rights violations and in dealing with those that are committed with all due diligence. It also performs an essential function by providing the authorities with sound advisory assistance in connection with the strategy to be used for promoting human rights. The Commission is, in addition, intended to serve as an important channel for effective communication and cooperation with Ivorian civil society, United Nations bodies and other national and regional organizations working in the field of human rights.

79. The Independent Expert urges the officials of the National Human Rights Commission of Côte d'Ivoire to take a bolder stand against the human rights violations committed in their country. He also calls upon the Government of Côte d'Ivoire to raise its officials' awareness of the importance of the role that this institution could play in promoting human rights and to provide it with the material and human resources that it needs in order to fulfil its essential functions.

V. Judicial and constitutional reform

80. Deliberations concerning judicial reforms are proceeding, with possible amendments to the regulations currently governing the assize courts being debated. Some potential changes being mentioned include alterations in their structure and composition, along with the possibility of having an appeal review procedure. The Independent Expert is pleased to note that judges have been involved in the discussions on reforms in the justice system.

81. Some texts are still being awaited with some impatience, and the Government is urged to make an earnest effort to finalize them and have them promulgated without delay. There are three particularly important texts of this nature: (a) a text containing the wording of the definition of "victim", which is necessary in order to make an actual start on the victim compensation phase of the process; (b) a text on victim and witness protection, which is needed in order to facilitate the trials of persons suspected of being responsible for the violence of past years and further the reconciliation process; and (c) the text of the implementing regulations for the law on the protection of human rights defenders.

82. In his inaugural address, the President announced that the Constitution of Côte d'Ivoire was to be reformed without delay. The Independent Expert applauds this initiative, which could strengthen the rule of law by introducing further provisions to reinforce the country's democracy. It is also imperative to remove provisions from the Constitution that have the potential for deepening divisions within Ivorian society, such as article 35, which establishes the concept of "Ivoirité". It is also important to ensure that the powers of the different branches of government are balanced and that the judiciary is and remains independent. This reform effort could also provide an opportunity to establish the status of some bodies, such as the National Human Rights Commission of Côte d'Ivoire, as constitutional institutions and to strengthen their structures and consolidate their independence.

VI. The United Nations Operation in Côte d'Ivoire

83. The Independent Expert wishes to draw attention to the important role played by the United Nations Operation in Côte d'Ivoire (UNOCI) in providing support for the smooth running of the presidential elections in accordance with international standards. He also applauds its staff's sustained efforts to increase security and strengthen respect for human rights in Côte d'Ivoire. It is gratifying to see that the Security Council, by its resolution 2226 (2015), extended the mandate of UNOCI until 30 June 2016 while it proceeds to downsize. The Independent Expert would like to reiterate the recommendation that he made in his preceding report (see A/HRC/29/49, para. 104), since he believes that the withdrawal of UNOCI from Côte d'Ivoire should be conducted in a manner that will enable the country to maintain the ground it has gained in terms of economic and human development and to continue confidently along that path.

VII. Conclusions and recommendations

A. Conclusions

84. In the opinion of most of the national and international observers who were present at the elections, Côte d'Ivoire succeeded in holding presidential elections that were not marred by violence and that conformed to international standards.

As a result, for the first time in two decades, the country is capable of dealing with the challenges that it must overcome in order to further its economic and human development. The main such challenges are to consolidate the national reconciliation process on the basis of an even-handed administration of justice and to maintain peace and security. The objective of the observations and recommendations made by the Independent Expert, the Human Rights Council in the course of the universal periodic review and the Human Rights Committee of the United Nations is to accompany the country along that path. This necessarily entails the country's fulfilment of its international human rights commitments. The recent adoption of a strategy for monitoring the action taken pursuant to those recommendations is an encouraging sign, and the progress made and the results achieved under that strategy will be followed with interest.

B. Recommendations

85. The Independent Expert recommends that the Ivorian authorities take the following actions in order to strengthen the rule of law:

(a) Continue with the national dialogue with a view to including all political schools of thought as fully as possible in the democratic process;

(b) Build the capacity of the Independent Electoral Commission so that it is in the best possible position to organize the forthcoming legislative and local elections;

(c) Take advantage of the planned constitutional reform effort to consolidate the rule of law by, inter alia, strengthening the independence of the judiciary and raising the National Human Rights Commission of Côte d'Ivoire to the rank of an independent constitutional institution endowed with the necessary means to fulfil its mission.

86. The Independent Expert recommends that the Ivorian authorities take the following actions in order to reinforce the reconciliation process:

(a) Draw all the useful conclusions possible from the presidential election results and utilize them to consolidate the reconciliation process;

(b) Make the report and recommendations of the Dialogue, Truth and Reconciliation Commission public as a means of reinforcing the reconciliation process;

(c) Continue to strike a balance in terms of the prosecution of members of the two camps who are believed to have committed human rights violations with a view to providing the most effective means possible of healing the wounds caused by the series of crises that have occurred in the country since 19 September 2002;

(d) Continue to build the capacity of the justice system so that the investigations can proceed at a good pace and trials can take place within a reasonable time period;

(e) Build the material and human capacity of the office in charge of conducting exhumations;

(f) Adopt and promulgate a law which defines the concept of a victim of the post-election violence and the concept of redress and a law on witness and victim protection;

(g) Clarify how the roles of the National Commission on Reconciliation and Compensation for Victims and of the National Programme for Social

Cohesion relate to one another in order to smooth the way for the provision of redress;

(h) Build a bridge between the pilot phase of the reparation process and the overall strategy for providing victims with redress.

87. The Independent Expert recommends that the Ivorian authorities take the following actions in order to improve prison conditions:

(a) Act in accordance with international standards governing arrests and custody. Persons taken into custody should be held in a known, legally registered location and should enjoy all their rights (including the right to have the assistance of a lawyer and the right to be brought promptly before a judge);

(b) Proceed with prison reform efforts with all due diligence;

(c) Promptly put an end, by lawful means, to the tyranny exercised by certain prison bosses over the rest of the prison population in the Abidjan Detention and Correctional Centre;

(d) Relocate the Juvenile Observation Centre that is currently sited within the Abidjan Detention and Correctional Centre as quickly as possible;

(e) Take steps to ensure that all minors who are in custody are in all cases held separately from adult prisoners, regardless of the stage of the legal proceedings concerned;

(f) Take steps to ensure, under the supervision of the justice system, that the rights of the children housed in the Dabou Centre are upheld;

(g) Protect the children known as "talibés" from all forms of exploitation.

88. The Independent Expert recommends that the Ivorian authorities take the following actions with respect to the advancement of women:

(a) Pass the bill designed to provide women with equal opportunities to take up public office and promulgate that law without delay;

(b) Amend the Code of Criminal Procedure and the Criminal Code to include a clear definition of rape that specifies all of the constituent elements of the offence and continue to combat all forms of violence against women by, inter alia, working to heighten awareness of this problem and to ensure that perpetrators of rape and violence against women do not go unpunished;

(c) Continue to address the problem of early pregnancies among students and early marriage;

(d) Continue to conduct campaigns to heighten awareness of discrimination and violence against women.

89. The Independent Expert recommends that the international community take the following actions:

(a) Continue to assist Côte d'Ivoire to consolidate peace and its national reconciliation process;

(b) Assist Côte d'Ivoire to build the capacity of its justice system and to upgrade its correctional facilities, particularly its custodial facilities and facilities for the rehabilitation of minors;

(c) Assist Côte d'Ivoire to protect children and promote the advancement of women;

(d) Contribute to funds to be used to provide redress to victims of post-election crises.

90. The Independent Expert wishes to reaffirm the importance of maintaining the UNOCI mission until the achievements of Côte d'Ivoire in terms of security and progress towards greater respect for human rights are properly consolidated.